

No. 9(1)-81/6 Lab. 13924.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Rajender Singh, son of Shri Ramkaran workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E 137, TAGORE GARDEN, NEW DELHI 110027.

Shri Rajender Singh, son of Shri Ramkaran (workan)

versus

The Management of M/s Hindustan Everest Tools Ltd. Jatheri, District Sonapat, Haryana

Appearances—

1. Shri Rajender Singh, alongwith Shri Chander Singh, Authorised representative.
2. Shri U.C. Pant, Dy. Manager (Personnel) alongwith Mr. D.N. Gupta.

ARBITRATION AWARD

The parties named above appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 1st May, 1981 under Section 10-A (3) of the Industrial Disputes Act, 1947. This arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*, vide No. 1D/RTK/67/81/26833, dated 27th May, 1981. The following point in dispute was referred to me for arbitration :—

1. Whether the action taken by the management was justified and if not ; to what relief the workman is entitled to .

On receipt of the notification, the notices were addressed to the parties. The parties made their appearances, filed statement of their claims, written statement as well as rejoinder. The management filed documents in support of their contention in this case, while the representative of the workmen filed collective documents for all the cases, not written by the individual workman. The pleadings of the parties gave rise to the issues which were framed with their consent, as under :—

1. Whether the workman remained unauthorisedly absent exceeding 10 days from duty.
2. Whether the action taken by the management tantamounts to retrenchment. If so, to what relief he is entitled to .

Thereafter the parties tendered their evidences and also advanced their arguments. The workman, appeared himself as witness in his case. Shri Rajender Singh deposed that he resorted to Dharna on 16th March, 1981 to 3rd April, 1981 in Nehru Place (Head office of the Company) in support of their demand raised, which was within the knowledge of the management. He further added that he had no knowledge about the standing orders/ rules of the Company and was refused entry by the watchman on 4th April 1981, when he reported for duty, after the Dharna was lifted on 3rd April, 1981.

In his cross-examination, he denied to have received appointment as well as confirmation letters, but recognises his signatures on the confirmation letter dated 27th June, 1977. He read contents of the letter, dated 27th June, 1981 which mentioned about the observance of the sanning order etc. He admitted that the leave has to be availed after getting it sanctioned in advance and also his signature in token of receipt of leave book issued to him by the management. Further, he admitted that this postal address is correct but denied to have received letters dated 19th March, 1981 and 24th March, 1981 sent to him by the management under UPC and also denied to have received the Registered A/D letter dated 2nd April, 1981. He could name Shri Hiralal, Chowkidar who refused him entry on 4th April 1981. He further admitted that he did not write to the management to take him back on duty, after the incident of 4th April, 1981.

While the management examined S/ Shri U.C. Pant, Dy. Manager (Personnel) and Mr. R.K. Dixit (Personnel Officer) Hira Singh, Head Watchman, Rajpal and Niranjan Singh, Watchmen, as witness.

Shri Pant stated that he visits H. O. (Nehru Place) as an official routine and also visited the same during 9th March to 3rd April 1981. He met S/ Shri Jagbeer Singh and Janardhan Ojha and exchanged "Ram Ram" as well as with some other workers too. He further stated that there were many workers, who after performing their duties visited Nehru Place for Dharna and the number varied from time to time, as the number was not fixed nor the workers. He stated that the list of workers who are dismissed, discharged or resigned etc. is given to the Security Supervisor to ensure that these workes are not allowed to enter the factory

again. Only two workers namely S/ Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981 as told to him by Shri Hira Singh, Head Watchman. But these workers did not wait at the gate for meeting him though he did not take more than half an hour to reach his office. He further deposed that there was intervention from the Labour department, but without any fruitful result. A copy of the standing order is displayed on the notice board and the leave procedure is generally known to the workers. He added that the workers, whose cases are under arbitration did not send any written explanation regarding their un-authorised absence despite notices issued excepting 2 workers, namely Jagbeer and Janardhan Ojha, who requested to take back on duty which was received very late. In his cross-examination, he admitted that there was conciliation meeting on general demand, dated 6th January, 1981 which has since been rejected and filed by the Labour Department,—vide their letter No. 38707, dated 21st August, 1981. He denied to have received the hunger strike notice,—vide letter, dated 16th March, 1981 Exhibit W-4. He further confessed to have met the Labour Minister, Haryana, when the Dy. Labour Commissioner, Sonapat had called a conciliation meeting where he explained the factual position to the Minister. He denied the receipt of letter, dated 17th March, 1981 Exhibit W-5 but admitted that letters, dated 3rd April, 1981 Exhibit W-6 and the Management letter, dated 15th March, 1981 Exhibit W-7, letter, dated 17th March, 1981 Exhibit W-8 and letter dated 19th September, 1981 Exhibit W-9. He later denied that the names of the workmen have been struck off and affirmed that the workers who lost their lien on employment were due to un-authorised absence and denied any such action has been taken due to their union activities.

Shri Hira Singh, Head Watchman stated that he was on duty on 4th April 1981 from 7 A.M. to 7 P.M. S/Shri Ram Chander and Suresh Kumar approached him at about 9 A.M., after being denied the entry by the watchman and wanted to meet Shri U.C. Pant. He went inside to seek instruction from Shri Pant, who instructed him to bring the men in his office. But on his return he did not find S/Shri Ram Chander and Suresh Kumar at the gate. He added that no other workman came to the gate and meet us on that day. In his cross-examination, he affirmed that he was on duty on 4th April 1981 and denied any knowledge about Dharna by workers in Nehru place. He also added that no other workman excepting S/Shri Ram Chander and Suresh Kumar came to the gate on 4th April, 1981. He vehemently denied that he has been tutored by the Management to tender his evidence.

Shri Rajpal and Niranjana Singh, watchmen, deposed that they were on duty on 4th April, 1981 at gate No. 1. Only S/Shri Ram Chander and Suresh Kumar were refused entry on that day on the advice and instructions received from the Management and the head watchman was informed, who took further action. They further added that no other workman came on that day and stated that they know the leave procedure as well as the standing order. Shri Rajpal Watchman, deposed that he was on duty on 19th April 1981 from 7 A.M. to 3 P.M. 19th April 1981 being Sunday, the factory was closed being weekly rest day, the question of S/Shri Janardhan Ojha and Jagbeer Singh coming on duty on that day does not arise.

In his cross-examination, he told that he knew S/Shri Janardhan Ojha and Jagbeer Singh. He told that he gets knowledge about standing orders from Time Office and there was no other workers at gate excepting S/Shri Ram Chander and Suresh Kumar on 4th April, 1981.

Shri Rakesh Kumar Dixit (Personnel Officer) while tendering the evidence explained the procedure adopted in case of absenting workers and showed the Muster roll for the year 1981 wherein the word "Left" have been recorded against the names of workers whose cases are under arbitration. He also deposed that he heard that workers, namely, Vikram Pal, Chander Pal, Ram Chander and Bagedan Parshed had got employment with Messrs : Super Tools and Zandu Forgings, Bhiwani, (Raj).

In his cross-examination, he could not tell the name of worker, who gave this information to him nor he had any knowledge about the agitation as he joined subsequently.

The parties also advanced their arguments :

The learned representative of the workmen, drew my attention to the illegality of the orders passed by the Management by invoking clause No. 15 of the Standing orders as there was no dis-obedience or defiance of the standing orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for the acceptance of their justified demands and the Dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off their names was uncalled for. He further elucidated that there are no such circumstances from which it can be inferred that they had left the services or had any such intentions. In this connection, he relied on the following awards contained in the cases cited below :—

(1) G.T. Lad—*Versus*—Chemical and Fibres India Ltd. in 1979—LIC—P.No. 290.

(2) Buckingham Company—*Versus*—Venkatiah—LLJ 1963, P.No. 638.

He also questioned the bona fide of the management in acting in harsh and perverse manner to crush the peaceful and constitutional activities of the union. He further challenged the action of the management that

the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court as under :—

- (1) State Bank of India—*Versus*—Subramaiam—1967—1—LLJ 278.
- (2) Hindustan Steel Ltd.,—*Versus*—Presiding Officer, Labour Court, 1976 LIC—766.
- (3) Delhi Cloth and General Mills Co. Ltd.—*Versus*—Shambunath Mukherjee—1980 LLJ—Page 1.
- (4) Mohan Lal—*Versus*—Bharat Electronics Ltd. 1981—Page LIC—806.
- (5) Santosh Gupta *Versus* Bank of Patiala LIC 1980—687

He accordingly contended that the management did not observe the conditions precedent to retrenchment and committed illegality, thus the workmen are entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on Dharna excepting his lone statement. The number of workmen on Dharna, period of Dharna etc. have difference versions and thus cannot be accepted that a group of workers i.e. 31 or so were constantly on Dharna. He refuted the allegations of the learned counsel from the opposite side that the Management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—*vide* their letters, dated Exhibit W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—*vide* endorsement No. 38707, dated 31st August, 1981. It is, obvious that there was no justification for the workers/Union to create any stir on this account. He also pointed out to the fallacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head watchman and Rajpal and Niranjan Singh, Watchmen. He also pointed that there is no truth in the statement of S/Shri Janardhan Ojha and Jagbeer Singh that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger-strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the Union,—*vide* letter Exhibit W-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the Management in this case. His view was that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi" Light Railway Co., Ltd.,—*Versus*—KN Jogalekar—In 1973 and—still holds good being the judgement of a larger Bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) DCM—*Versus*—Shambunath Mukherjee
- (2) State Bank of India—*Versus*—Subramaniam
- (3) Hindustan Steel Ltd.,—*Versus*—Presiding Officer, Labour Court, Orissa.

and others

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Fajnikant Mehta—*Versus*—Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment. 1980—LLJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

- (1) From the facts and evidence it is clear that there was un-rest amongst some workers due to demand raised by their Union. It is also proved that the demand raised by the Union were not considered, it for any action in view of the subsisting settlement dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the Management sent him letters (Recall notices), dated 19th March, 1981 and 24th March, 1981 under UPC and admitted by him about receipt of one letter and in an indirect manner by the Union,—*vide* their letter exhibit No. W-5, dated 17th March, 1981. Moreover the Management did send Registered A/Dict rs which was returned by the postal authorities with remarks "not received"

The workman has also admitted that he did not write to the management about his resumption of his duties after refusal by the management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 16th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the Management under clause 15 of the Standing Order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of mala fide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue number 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (00) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

CLAUSE NO. 15 OF THE CERTIFIED STANDING ORDER

Discontinuation of Service

"If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) he shall lose lien on his own appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the Management."

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25 (F) (b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the Management.

J. D. MEHTA,
Sole Arbitrator.

The 16th April, 1981

Forwarded (four copies) to Secretary, Haryana Government, Chandigarh., Labour and Employment Department, as required under section 17 of the Industrial Disputes Act 1947

J. D. MEHTA,
Sole Arbitrator.